IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.15 OF 2002

M/s.Om Builders ....Petitioner

V/s.

Smt.Prabha R. Mhaske & Anr. ....Respondents

Mr.K.S. Bapat for the Petitioner.

None for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND NOVEMBER, 2004.

P.C. :

1. The Petitioner has sought a writ of certiorari to quash and set aside the impugned judgments and orders dated 16th September, 2000 and 19th March, 2001 passed by the Presiding Officer, 11th Labour Court, Mumbai in Reference (IDA) No.670 of 1994 and in Misc.Application (IDA) No. 82 of 2000. The application to set-aside the order dated 16th September, 2000 was filed on the basis that the Petitioner had not been served with the notice from the Court or the statement of claim. The order dated 16th September, 2000 directed the Petitioner to

deposit the legal dues of the deceased workman with effect from 22nd December, 1993 within one month from the date of publication of award failing which the amount was to carry interest at 9% p.a.

2. The Petitioner's contention that they were not served with the notice from the Court or with the statement of claim, appears to be well founded. The Respondents were served with the notice of hearing at the admission stage. They however remained absent. By an order dated 5th February, 2002, Smt.Nishita Mhatre, J. admitted the Petition. Her Ladyship observed that the Roznama produced by the Petitioner disclosed that the Petitioner had not been served with the notice from the Court or statement of claim. I have perused the same Roznama produced before me. There is nothing on record to suggest that the Petitioner was served with the notice from the Court or the statement of claim. In the circumstances, the matter ought not to have been proceeded with on merits. The fact that the workman had expired and that the said fact was not mentioned in the application for setting aside the order dated 16th September, 2000, would make no difference to an application for setting aside the ex-parte order.

3. The above aspects of the matter have not even been considered by the impugned orders.

4. In the circumstances, the Petition is made absolute in terms of prayer (a). The Reference (IDA) No.670 of 1994 shall be heard on merits after affording the Petitioner an opportunity of being heard in the matter. The Petitioner shall serve a copy of this order on the Respondents within four weeks from today.

5. The amount deposited pursuant to the order dated 5th February, 2002 with accretions, if any, shall be refunded to the Petitioner subject to each of the partners of the Petitioner filing an unconditional undertaking in this Court to pay the amounts, if any, are awarded in the aforesaid reference without requiring the Respondents to execute the same. Needless to add that the undertaking will be subject to the Petitioner’s rights to challenge the award if adverse to the Petitioner. The amounts however, shall not be withdrawn for a period of four weeks after the service of this order by the Petitioner on the Respondents.

6. The Writ Petition is accordingly disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Chamber Registrar/Court Stenographer of this Court.